IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

W.P. No. 636 of 2003 (M/S) decided on 19.07.2003

Ranjeet Singh----------Petitioner
Vs
State of Uttaranchal & others----Respondents

A.F.R. (Approved for Reporting)
~~Not approved for reporting~~

Date:-19/7/2003 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

COURT NO.6

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no.636 OF 2003 (M/S)

CIVIL SIDE

Ranjeet Singh …….Petitioner

Versus

State of Uttaranchal & others …….Respondents.

Hon'ble Rajesh Tandon, J.

This writ petition has been filed against the order dated 27.12.2002 passed by the deputy Director, Consolidation under section 48 of U.P. State Consolidation of Holdings Act.

Heard Sri Pankaj Purohit on behalf of the petitioner and Sri Nand Prasad and N.C. Gupta on behalf of respondents no. 2, 3 and 4 at great length. Both the parties have agreed that the wit petition may be disposed of finally at the admission stage.

The facts leading to the present writ petition are that the petitioner has filed objection before the Consolidation Officer stating therein that the land in question has been wrongly recorded in the revenue record as barren land in schedule5. The petitioner has claimed himself in possession of plot no. Gata No.38/2 of Khata no.142 (New Gata no.110 of Khata no.212) of village Karanpur measuring 1.345 Hectare and has alleged that in revenue record the said land has been wrongly recorded as barren land under schedule5. The said application was registered as case no.1825.

The Consolidation Officer vide his order dated 23.3.1996 has rejected the objection of the petitioner. The petitioner has challenged the order dated 23.3.1996 by filing an appeal before the respondent no.3 i.e. Settlement Officer, Consolidation which was registered as Appeal No.237 of 1997 under section 11 (1) of U.P. Consolidation of Holdings Act. The learned Settlement Officer after satisfying about the nature of the land, allowed the appeal vide order dated 25.11.1997 set aside the entries of barren land in respect of the land in dispute and directed to enter the name of the petitioner as Bhumidhar of schedule IV.

The respondent no.4 has moved an application for recalling the order of settlement Officer Consolidation vide his order dated 15.2.20000 the application was allowed and the order under appeal dated 25.11.97 was set aside. However, Settlement Officer Consolidation has remanded the matter to the Consolidation Officer, Kashipur. The petitioner challenged the order dated 15.2.2000 in revision before Deputy Director Consolidation. According to the petitioner Deputy director Consolidation vide his order-dated 8.11.2000 has dismissed the revision ex parte. The petitioner has moved an application for recalling the ex parte order dated 8.11.2000. The said application came up for hearing before the Deputy Director Consolidation and instead of recalling the said ex parte order dismissed the revision treating it as a review of the said order.

The present writ petition has been filed by the petitioner challenging the order dated 4.1.2003 passed by the Deputy Director Consolidation. According to the petitioner order passed by the revisional authority is wholly illegal in as much as order dated 8.11.2000 was an ex parte order and assuming the order has been passed on merits he was never heard before the Deputy Director of Consolidation on merit and as such he having been deprived of his

right of hearing the application of the petitioner for recalling the exparte order deserves to be allowed.

At the admission stage the learned Standing Counsel on the other hand submitted that he has no objection in sending back the case for fresh hearing before the Deputy Director Consolidation.

I have considered the submissions of both the parties and in my opinion no useful purpose will be served by keeping the writ petition pending. The interest of justice requires that if the party files an application for restoration he should have been given sufficient opportunity of hearing. Section 48 of U.P. Consolidation of Holdings Act, provides as under:-

"The Director of Consolidation may call for an examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings, or as to the correctness, legality or propriety of any order (other than an interlocutory order) passed by such authority in the case of proceedings, may, after allowing he parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit."

As will appear form aforesaid section that the powers under section 48 are wide enough to correct the illegality committed by the inferior court. He, therefore, has to be satisfied himself as to "regularity of the proceedings' or as to the correctness, legality or propriety of any order'' The power vested with the authority concerned, therefore, is wide to this extent that before deciding the case he has to be satisfied with regard to the correctness or illegality of the order.

It is a settled law that once an order has been passed exparte although on merits and the parties were not given an opportunity of hearing, restoration application is maintainable and the parties cannot be deprived of filing the restoration application.

The aforesaid proposition has been supported by a Division Bench of Allahabad High Court. Their Lordship have held in *Abdul Aziz and another vs. Raj Chhabra, AIR 1968 Allahabad 119 as under:*

"It shall thus be seen that rule 13 is wide enough to cover all case of ex parte decrees no matter for what reason the ex parte decree has been passed."

In order to do substantial justice between the parties it is necessary that the Deputy Director Consolidation after allowing the restoration application filed by the petitioner he should hear the revision under section 48 of the Consolidation of Holdings Act afresh.

In *G.P. Sirvatava vs. R.K.RAizada and others (2000) 3 Supreme Court cases 54,* the controversy came up before theApex Court. Their Lordships have held as under:

"The words ""was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The Courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The sufficient cause for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time.. if sufficient cause is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretions normally exercised in his favour, provided the absence was not mala

fide or international. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

In my opinion the order dated 8.11.2000 is fully silent regarding the pleadings of the parties. The Deputy Director of Consolidation has not considered in detail the nature of the controversy as pleaded by the petitioner in his subjections and as much the interest of justice requires that the petitioner should be afforded an opportunity of hearing before the Deputy Director of Consolidation on merit. the observations of the Apex Court in G.P. Srivastava's case (Supra) that lis has to be decided on merit in order to do substantial justice between the parties.

In the result the order dated 4.1.2003 and the order-dated 8.11.2000 passed by the Deputy Director of Consolidation is hereby quashed.

The writ petition is allowed. A writ of certiorari is issued quashing the orders dated 4.1.2003 and 8.11.2000. The Deputy Director of Consolidation shall hear the revision on merits. Parties are directed to appear before the Deputy Director of Consolidation on 13th August 2003.

(Rajesh Tandon, J.)

19.07.2003
Dhyani